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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,161	05/20/2002	Nikolai Grigorievich Lyapko	PAA-101-A	4995

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06/30/2003

EXAMINER

YU, JUSTINE ROMANG

ART UNIT PAPER NUMBER

3764

DATE MAILED: 06/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/031,161

Applicant(s)

LYAPKO, NIKOLAI
GRIGORIEVICH

Examiner

Justine R Yu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 7-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of species 1 in Paper No. 1-6 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. This application contains claims 7-18 being drawn to species nonelected in Paper No. 8. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited.

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

5. The disclosure is objected to because of the following informalities: on page 7, line 9, "process charts" cannot be found in figures 9-10.

Drawings

6. The drawings are objected to because foreign language is used for figure numbers. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

7. Claim 6 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim 5. See MPEP § 608.01(n). Accordingly, the claim 6 has not been further treated on the merits.

Claim Rejections - 35 USC § 112

8. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 6-8, “with their portions having the increased thickness (3) and with their portions having the pointed tip projecting from the base member” is misdescribed because it is understood that the increased thickness doesn’t project from the base member. In line 12, “its plasticized state” is unclear as how to define such state. In addition, lines 8-12, the phrase “characterized in thatduring its setting” is confusing as whether the applicant attempts to claim structure of the applicator or a method of making the applicator.

Claim Rejections - 35 USC § 103

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9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 3, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gelfer et al (5,250,067) in view of Leupold (3,923,064).

Gelfer teaches a body treatment pad having a flexible base member 10 being made of non-woven plastic material (column 3, line 8), a plurality of needles (14, 15) each having a base end (increased thickness) and a tip 17 (figures 1 and 3). It is inherent that Gelfer's base member has at least a certain degree of elasticity because the characteristic of the flexible non-woven plastic material.

Gelfer does not explicitly disclose the increased thickness being located inside of the base member. However, Leupold teaches a needle 8 could be embedded in a base (figure 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to embed Gelfer's needles within the base as taught by Leupold, since it is a matter of design for art recognized equivalent.

Regarding the method steps in the apparatus claim 1, patentable weight has not been given to the manufacturing method steps since the claim is an apparatus claim. Besides, since the modified Gelfer's device has the same structure as claimed, using the particular method to produce the device is merely an obvious design consideration within the knowledge of one skill in the art.

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11. Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gelfer et al in view of Leupold as applied to claim 1 above, and further in view of Yoneda et al (JP407100181A).

The modified Gelfer's base member lacks lugs that envelop needles that are made in the form of nails. However, Yoneda teaches a cone-shaped or trapezoidal-shaped needle (figures 2 and 6) could be modified to a nail-shaped needle 12 which including an increased thickness 15, and the nail is surrounded by a lug 13. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Gelfer's needle with a nail-shaped needle surrounded by a lug as taught by Yoneda, since it is a matter of design for art recognized equivalents.

Conclusion


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gavronsky et al (6,022,368), Kramer (6,458,146), Chasan (5,988,174), Yoo (5,531,675), Lynch et al (5,938,684), Von et al (CH 683,822), Nakayama (JP 10-142,360), and JP 11-155,926 are cited to show different acupuncture needles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine R Yu whose telephone number is (703)308-2675. The examiner can normally be reached on 8:30am - 6:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703)308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.


Justine R Yu
Primary Examiner
Art Unit 3764

JY
June 18, 2003